IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUMMONS FOR JUDGMENT NO. 2 OF 2005

IN

SUMMARY SUIT NO. 5546 OF 1999

Canara Bank .....Plffs.
vs.
M/s. Niji Textiles P.Ltd .....Defnds.

R.C. Dubey i/b. Sanjeev Kanchan and Co.
for the plaintiffs.
Sheela Tambe i/b. Manoj Bhatt
for the defendants.

CORAM: S.U. KAMDAR, J.

DATE : 18th October, 2005.

P.C. :.

1. The present suit is on two bills of exchange which are both dated 18.7.96. The said bills of exchange are payable on expiry of 75 days i.e. the maturity date of the bill of exchange is 3.10.96.

The suit is filed on 21.9.99. After filing the suit on 21.9.99 the defendants were not served right upto 2001 even after the service of the writ of summons on 19.4.2001 The summons for judgment has been initiated only on 3.1.2005. Thus there is a substantial delay. However keeping in mind the division bench judgment in the case of Bankay Bihari B. Agrawal and Ors. vs. Bhagwanji Meghji and Ors reported in 2001(2) Bom.C.R. 86 wherein it has been held that under the High court Rule 227 it is the discretion of the court to waive the delay. I do so on the condition that the plaintiff to pay cost quantified at Rs.3500/- to the Maharashtra Legal Aid Services Authority.

2. Now turning to the merits of the case the suit is based on two bill of exchange dated 18.7.96 for a sum of Rs.1,45,151.90/- and Rs.1,03,675/- with interest claimed at Rs.71,260/- and Rs.50,897/-. Learned counsel appearing for the defendant has contented that inrespect of the said bill of exchange the suit is already filed in DRT against the drawer of the bill and therefore the present

suit is not maintainable. In my opinion the defence raised has no merits. It is because the liability of the acceptor of the bill of exchange is independent and distinct to that of the drawer of the bill of exchange under the Negotiable Instruments Act.

3. The next contention raised is that there is a security created by the drawer inrespect of the suit claim and therefore present suit is not maintainable as a summary suit under O.37 R.2 of CPC. In my opinion the aforesaid contention also has no merits, because as far as the acceptor is concerned there is no security created inrespect of their liability and in that view of the matter I reject the aforesaid contention.

4. However to give an opportunity to the defendants to defend the suit, I direct the defendant to deposit Rs.2,50,000/- within four weeks failing which the plaintiff will be entitled to the decree.

5. The amount so deposited will be invested by the Prothonotary and Senior master in fixed deposits of any nationalised bank initially for a period of three years and renew the same from time to time till further orders.

5. If the amount is deposited as aforestated, then suit is transferred to the list of Commercial Causes. Written statement or points of defence to be filed four weeks from the date of deposit. Affidavits, list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on board of the learned Judge taking Commercial Causes.

6. Summons for Judgment disposed off accordingly.

sd/-

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